

# **THE HIGH COURT OF TRIPURA**

## **A\_G\_A\_R\_T\_A\_L\_A**

**WP(C) NO.91 of 2012**

**Power Mech Projects Limited,**  
A company incorporated under the Companies Act 1956,  
having its registered office at Plot No.77,  
Jubilee Enclave, Opposite Hitex,  
Madhapur, Hyderabad - 500081 and also  
having an office at Kanchanpalli,  
Near Pranavananda Vidya Mandir,  
South Badharghat, P.O. A.D. Nagar,  
P.S. West Agartala, District - West Tripura.

..... *Petitioner.*

- Vs -

- 1. The State of Tripura,**  
Represented by the Secretary to the Government of Tripura,  
Revenue Department, Capital Complex,  
P.O Kunjaban, PS East Agartala,  
District - West Tripura.
- 2. The Commissioner of Taxes,**  
Government of Tripura,  
P.N. Complex, Gurkhabasti,  
P.O Kunjaban, PS West Agartala,  
District West Tripura.
- 3. The Superintendent of Taxes,**  
Charge - V, Palace Compound,  
P.O. Agartala, P.S. East Agartala,  
District - West Tripura.
- 4. Bharat Heavy Electricals Limited,**  
A Government of India undertaking,  
having its Power Sector Eastern Region Office at DJ-9/1,  
Sector - 2, Salt Lake City - Kolkata 700019,  
Represented by Manager (Finance), BHEL,  
Power Sector Eastern Region, Palatana site,  
South Tripura, Udaipur, P.O - R.K Pur,  
District - South Tripura.

..... *Respondents.*

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**  
**HON'BLE JUSTICE MR. S C DAS**

For the petitioner : Mr. A K Bhowmik, Sr. Advocate,  
Mr. R Dutta, Advocate.

For the respondents : Mr. S Deb, Sr. Advocate,  
Dr. A K Saraf, Advocate,  
Mr. A Goyal, Advocate,  
Mr. T K Deb, Advocate.

Date of hearing and  
delivery of judgment : **29.11.2013**

Whether fit for reporting : No.

**JUDGMENT & ORDER (ORAL)**

(Deepak Gupta, CJ)

By means of this writ petition the petitioner has laid challenge to the communication dated 22<sup>nd</sup> January, 2011 sent by the Superintendent of Taxes, Government of Tripura to the M/s Bharat Heavy Electricals Ltd. directing them to deduct VAT on the gross amount of bills of the dealer(petitioner herein).

2. There is no manner of doubt that the contract which the petitioner has entered into with the respondent is a works contract and, therefore, tax has to be paid only on the taxable turnover as determined in terms of Sections 4 and 5 of the Tripura Value Added Tax and not on the gross turnover. Therefore, the order is bound to be quashed. We accordingly quash the order and further direct that the assessing officer shall make assessment of the tax, if any, payable by the petitioner on the value of the

property in goods which has been transferred during the execution of the works contract in question.

3. We may make it clear that this assessment has to be made in the light of the observations made by the Apex Court in *Gannon Dunkerley and Co. Vs. State of Rajasthan, [(1993) 1 SCC 364]* and by this Court in *Biplab Kr. Ghosh Vs. Union of India, [WP(C) 73 OF 2013]*. We further direct that the petitioner should cooperate with the Assessing Officer and the assessment should be completed latest by 28<sup>th</sup> February, 2014. In case any amount is found refundable to the petitioner the same shall be refunded alongwith interest as payable under the provisions of the Tripura Value Added Tax on or before 30<sup>th</sup> April, 2013. We may also make it clear that we expect both the petitioner and the Assessing Officer to obey this order in letter and spirit and work in cooperation with each other and in case we find that either the petitioner or the Assessing Officer is trying to delay the matter we shall be compelled to take serious action against the erring party. The petitioner is directed to appear before the Assessing Authority alongwith a copy of this judgment on 10<sup>th</sup> December, 2013.

The writ petition is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE

*Sukhendu*